

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of MORIAH WHEELIHAN and  
FRANK ALEXANDER WHEELIHAN II, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SUSAN WHEELIHAN,

Respondent-Appellant.

UNPUBLISHED

June 19, 2007

No. 274161

St. Clair Circuit Court

Family Division

LC No. 05-000117-NA

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Before: Whitbeck, C.J., and Wilder and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, respondents Frank and Susan Wheelihan appeal as of right from the trial court order terminating their parental rights to the two minor children.<sup>1</sup> We affirm.

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<sup>1</sup> MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (child will be injured if returned to parent).

## I. Basic Facts

This matter came to the attention of the Department of Human Services in approximately March 2005 after a referral was made alleging domestic violence between the Wheelihans as well as Frank Wheelihan's physical abuse of Moriah Wheelihan. Petitioner filed a petition seeking temporary custody of the children, alleging that Moriah Wheelihan was locked in her room for misbehavior and Frank Wheelihan had struck her for vomiting in her bed, that Susan Wheelihan was physically and verbally abused by Frank Wheelihan on a frequent basis, and the children had witnessed the abuse. The petition alleged that the abuse became worse when Frank Wheelihan drank, and that he used marijuana as well. Susan Wheelihan was resistant to going to a shelter and did not follow her pastor's advice to leave the home. The petition alleged that Susan Wheelihan minimized the abuse when police were called to the home and stated that domestic abuse was fine as long as no one called the police. The petition alleged that Frank Wheelihan had been in prison for assault with a dangerous weapon and had a current warrant for his arrest in Oregon for possession of firearms. The petition alleged that Frank Wheelihan had an extensive history with the Port Huron Police Department, with complaints of domestic violence, intimidation, and a personal protection order.

## II. Sufficiency Of The Evidence

The Wheelihans challenge the sufficiency of the evidence for the termination of their parental rights. We conclude that the trial court did not clearly err by finding that at least one statutory ground for termination of their parental rights was established by clear and convincing evidence.<sup>2</sup> The primary condition of adjudication was frequent and ongoing domestic violence between the Wheelihans occurring in the presence of the children. The evidence clearly demonstrated that this condition continued to exist at the time of the termination trial,<sup>3</sup> approximately 18 months after the initial dispositional order. The record indicates at least six instances of domestic violence occurring throughout these proceedings, the most recent being that of September 17, 2006, little more than one month before the termination trial. Susan Wheelihan's admissions over the course of the proceedings indicated that the abuse was ongoing, and she further stated that she was afraid for the children to be in the home. Despite the Wheelihans' denial of any domestic violence in their trial testimony, the trial court's determination that this situation continued to exist was not clearly erroneous. The trial court specifically commented that it found Susan Wheelihan's denial incredible and its assessment, which appears abundantly justified by the record, is entitled to deference.<sup>4</sup>

Contrary to the Wheelihans' arguments, the record is quite clear that they made little or no progress in addressing the barriers to reunification. Frank Wheelihan's therapist testified that he made no progress of any nature. Susan Wheelihan's therapist testified that she had made very minimal progress, as she had chosen to stay with her husband rather than get her children back.

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<sup>2</sup> MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

<sup>3</sup> MCL 712A.91b(3)(c)(i).

<sup>4</sup> *In re Miller*, *supra* at 337.

Lisa Stoneberg, who provided parenting education for the Wheelihans, also did not feel that any of their goals were met. Since both parents denied the existence of abuse that was clearly chronic and ongoing, there appears little likelihood that the Wheelihans will ever meaningfully address this issue. Under these circumstances, we conclude that the trial court did not clearly err by finding that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children.<sup>5</sup>

We note that the Wheelihans failed to provide proper care and custody for the children by engaging in domestic violence in their presence.<sup>6</sup> The same evidence indicating that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children,<sup>7</sup> equally demonstrates that there is no reasonable likelihood that the Wheelihans will be able to provide proper care and custody for the minor children within a reasonable time considering the ages of the children,<sup>8</sup> and that there is a reasonable likelihood that the children would be harmed if returned to the Wheelihans.<sup>9</sup>

Susan Wheelihan's claim that petitioner did not adequately assist her in becoming self-sufficient warrants no relief on appeal. In general, when a child is removed from the custody of the parents, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan.<sup>10</sup> The record in this case does reflect that the Department of Human Services (DHS) made reasonable efforts to address the barriers to reunification by offering Susan Wheelihan individual counseling, parenting classes, domestic violence group counseling, anger management, psychological and substance abuse evaluations, and relationship counseling.

Frank Wheelihan claims on appeal that the trial court erred by admitting testimony concerning an incident of domestic violence occurring after the filing of the petition for termination of parental rights. This issue was not preserved by objection in the trial court and is therefore reviewed for plain error affecting Frank Wheelihan's substantial rights.<sup>11</sup> In *In re Laflure*, this Court advised that the probate court considering the fitness of a parent "must be aware of the total circumstances of the case before it."<sup>12</sup> The circuit court, which under past procedure conducted review of a termination decision by trial de novo, was further entitled to consider all events occurring up until the date of its review, since such evidence was relevant to

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<sup>5</sup> MCL 712A.19b(3)(c)(i).

<sup>6</sup> MCL 712A.19b(3)(g).

<sup>7</sup> MCL 712A.19b(3)(c)(i).

<sup>8</sup> MCL 712A.19b(3)(g).

<sup>9</sup> MCL 712A.19b(3)(j).

<sup>10</sup> MCL 712A.18f(1), (2), (4).

<sup>11</sup> *Hilgendorf v St John Hosp*, 245 Mich App 670, 700; 630 NW2d 356 (2001).

<sup>12</sup> *In re Laflure*, 48 Mich App 377, 391; 210 NW2d 482 (1973).

the issue of the parent's fitness.<sup>13</sup> This same principle dictates that the original trial court should accept evidence of events occurring up until the date of its decision, and the trial court committed no error by allowing testimony of an incident of domestic violence taking place after the petition for termination was filed.

### III. Best Interests Of The Children

We also conclude that the trial court did not clearly err by finding that termination of the Wheelihans' parental rights was not clearly contrary to the best interests of the children.<sup>14</sup> Although there was evidence of a bond between the Wheelihans and the children, Susan Wheelihan is plainly unable to protect the children from domestic violence, since she chose to return to Frank Wheelihan even after stating that she was afraid for the children to be in the home. Frank Wheelihan, the perpetrator of the violence, has not acknowledged or addressed the problem. Susan Wheelihan has stated that if the children reported being abused she would not believe them, and she has demonstrated her inability to protect them by remaining with Frank Wheelihan. The record supplies no evidence to suggest that the trial court made a mistake by finding that termination was not clearly contrary to the best interests of the children.

Affirmed.

/s/ William C. Whitbeck

/s/ Kurtis T. Wilder

/s/ Stephen L. Borrello

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<sup>13</sup> *Id.* at 382, 391-392.

<sup>14</sup> MCL 712A.19b(5).